



U.S. Customs and Border
Protection

OT: RR: RDL: FAPL
CBP-AP-2019-080769 MAP

September 30, 2019

Ms. Emily Crose
MuckRock News
DEPT MR 75363
411A Highland Ave
Somerville, MA 02144

Re: Freedom of Information Act Appeal of CBP-2019-060239

Dear Ms. Crose:

This is in response to your correspondence submitted electronically and received on August 28, 2019, regarding the August 10, 2019 decision of the Freedom of Information Act (FOIA) Division, Privacy and Diversity Office, U.S. Customs and Border Protection (CBP), which closed your FOIA request as insufficient, determined that your request “did not include a clear and detailed description of the records being requested,” indicated that the FOIA “is limited to requiring agencies to provide access to reasonably described, nonexempt records,” and indicated that “[a]s you failed to reasonably describe the records you are seeking, your request is not a perfected request, and [the FOIA Division is] unable to initiate a search for responsive records.” The FOIA Division also noted “[a]s per [their] June 19, 2019 correspondence to you [they] are closing your request as insufficient” and asked that you “resubmit your FOIA request, along with the required information.” In essence, the FOIA Division denied your request.

In a June 19, 2019 email correspondence, the FOIA Division informed you that after consulting with a CBP component office tasked with conducting a search for the email portion of your request, the office recommended “the scope be narrowed as the search terms are too common and may produce voluminous amounts of unproductive data.” The FOIA Division also informed you that “without identifying specific email boxes, they are unable to ascertain whether the email addresses searched would be associated with immigrant detention facilities.” They asked you to respond to their email correspondence so they could “assist you with reshaping your request in order to get the information you are seeking,” and indicated that “[i]f a response is not received within 10 working days (by July 3), your request will be considered insufficient and be closed as such.” Although we agree that your request did identify the records you seek, for the following reasons, we must deny your appeal.

In your initial request dated June 14, 2019, you requested “[a]ny handwritten, email, electronic or audio/visual records including the terms: “Dog Pound” “Freezer” “The Freezer”” for “the years of 2016 through the published date of this request (June 2019).” You indicated that “[t]hese records would be in regards to immigrant detainment facilities.” You noted that “[t]he requested documents will be made available to the general public, and this request is not being made for commercial purposes.” You requested that you be informed of any fees “in advance of fulfilling [your] request,” and that “the request filled electronically, by e-mail attachment if available or CD-ROM if not.” In your appeal correspondence dated August 29, 2019, you indicated that you “would like to appeal the integrity of this [the August 10, 2019 FOIA Division] response.” You also attached a supporting file titled “2019-060239.pdf” which contained a letter dated August 12, 2019, and marked “FOIA Appeal.” In the letter, you again noted that you “would like to appeal the integrity of this [the August 10, 2019 FOIA Division] response.” You indicated that your “request contained a clear request for any facilities containing captive humans referred to in records as “freezer” “The freezer” or “The Dog Pound.””

In response to your appeal, an attorney on my staff and I contacted staff at the U.S. Border Patrol (USBP) and the Office of Information and Technology (OIT) to conduct a separate search for records that pertain to your request. These were the most appropriate offices to consult regarding your request. In this regard, you and your organization are only interested in records containing the terms “freezer” or “The Freezer” or “Dog Pound” in the context of describing “immigrant detainment facilities.” As the USBP is the component within CBP that secures our borders by detecting and preventing the entry of illegal aliens and outside threats and reducing the likelihood that dangerous people and capabilities enter the United States between the ports of entry and OIT maintains CBP emails, they were the most appropriate offices to consult regarding your request. USBP staff indicated that they do not have any records containing the terms “freezer” or “The Freezer” or “Dog Pound” and cannot search alien statements for the terms “freezer” or “The Freezer” or “Dog Pound.” We also contacted staff at OIT to conduct a search for records responsive to your request. OIT staff informed us your request for “email . . . records including the terms: “Dog Pound” “Freezer” “The Freezer”” for “the years of 2016 through the published date of this request (June 2019)” (which translates to all CBP emails of all CBP email accounts containing the terms “freezer” or “The Freezer” or “Dog Pound” during the three-and-half-year or forty-two month time period and all attachments containing any of these terms of all CBP email accounts during the three-and-half-year or forty-two month time period with the terms “freezer” or “The Freezer” or “Dog Pound” used in any context, including their literal use as applying to the description of an appliance/refrigerated compartment/freezer or an enclosure to hold dogs, or described in CBP’s commercial law enforcement mandate context) would be unreasonably burdensome to obtain and review for release. CBP employs about 60,000 people, so based on your initial request, at least 60,000 email user accounts must be searched. Based on your initial request, each individual email and attachment for the three-and-half-year or forty-two month time period, conservatively estimated at a minimum of 100,000 emails and attachments, would have to be obtained from at least 60,000 user accounts in order to comply with this portion of your request. These

estimated 100,000 emails and attachments would include emails that contain the terms “freezer” or “The Freezer” or “Dog Pound” used in any context, including their literal use as applying to the description of an appliance/refrigerated compartment/freezer or an enclosure to hold dogs or described in CBP’s commercial law enforcement mandate context and emails from all CBP users because your request is not tailored to specific CBP user email addresses. After each individual email and attachment containing the terms “freezer” or “The Freezer” or “Dog Pound” (potentially totaling 100,000 pages or more of emails and attachments) is obtained, each email and attachment must be reviewed for responsiveness and redaction, including redaction of personal details and personally identifiable information (PII) that would reveal the identity of third parties mentioned in the records and of any exempt law enforcement information. This is a review of at minimum 100,000 pages of records (however, as noted, there may be potentially more pages as some emails and attachments may be longer than one page). As such, OIT indicated that your request for “email . . . records including the terms: “Dog Pound” “Freezer” “The Freezer”” for “the years of 2016 through the published date of this request (June 2019)” (which translates to each individual email and attachment that contains the word “freezer” or “The Freezer” or “Dog Pound” for the three-and-half-year or forty-two month time period) would be unreasonably burdensome to obtain and review for release.

We recommend that you review your initial request and narrow the scope of the request by identifying the specific CBP email account users for which you seek emails or, if the names of individuals is unknown, the geographic area from which you seek emails and the management level or title of CBP email account users for which you seek (for example, Border Patrol email accounts at the Patrol Agent in Charge level or higher in all southern border stations), by limiting the time period of requested records or submitting multiple requests covering shorter time periods, and if possible, by further defining or limiting the context of the terms requested. Once you have narrowed the scope of your request, we recommend that you submit another FOIA request or request(s) through the FOIA Online portal so CBP can obtain the records and make a determination regarding whether information in the records can be released. Please note that under the FOIA, you are only entitled to the first two hours of search time and first 100 pages without charge. Any further work on this request will require the advance payment of estimated fees. Based on the current scope of your request, we anticipate that these fees will be significant.

The Freedom of Information Act, particularly Title 5 U.S.C. § 552 (a)(4)(B), provides you with the opportunity to seek judicial review of this administrative appeal. You may institute judicial review in the United States District Court in the district in which you reside, have a principal place of business, where the agency records are located, or in the United States District Court for the District of Columbia.

Further, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a

Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 202-741-5770 or toll-free 1-877-684-6448.

Sincerely,

Shari Suzuki

Shari Suzuki, Chief
FOIA Appeals, Policy & Litigation Branch